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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिस से कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 26th August, 1972:—

BILL NO. 86 OF 1972.

A Bill to amend the Presidential and Vice-Presidential Election Act, 1952.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Presidential and Vice-Presidential Elections (Amendment) Act, 1972. Short title.

2. In section 2 of the Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as the principal Act),— Amendment of section 2.

31 of 1952.

(*a*) in clause (*d*), for the words "a member of either House of Parliament", the words and figures "a member of the electoral college referred to in article 66" shall be substituted;

(*b*) after clause (*f*), the following clause shall be inserted, namely:—

'(*ff*) "public holiday" means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881;';

26 of 1881.

(c) in clause (*g*), for the word "authorised", the word "competent" shall be substituted.

Amendment of section 4.

3. In section 4 of the principal Act, for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) The Election Commission shall, by notification in the Official Gazette, appoint for every election—

(*a*) the last date for making nominations, which shall be the seventh day after the date of publication of the notification under this sub-section, or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*b*) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*c*) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*d*) the date on which a poll shall, if necessary, be taken, which shall be a date not earlier than the fifteenth day after the last date for the withdrawal of the candidatures.

(*1A*) For the removal of doubts, it is hereby declared that if the last date for making nominations under clause (*a*) or the date for scrutiny of nominations under clause (*b*) or the last date for withdrawal of candidatures under clause (*c*) of sub-section (*1*), appointed by notification issued under that sub-section is declared, after the issue of the said notification, to be a public holiday, then, the next succeeding day which is not a public holiday shall be deemed to have been appointed by the notification as the last date for making nominations under clause (*a*) or as the date for scrutiny under clause (*b*) or as the last day for withdrawal of candidatures under clause (*c*), as the case may be, of the said sub-section and for that purpose, the Commission may, if necessary, make suitable amendments in the notification issued under sub-section (*1*) so as to bring it in accord with the provisions of that sub-section.".

Substitution of new sections for section 5.

4. For section 5 of the principal Act, the following sections shall be substituted, namely:—

Public notice of election.

"5. On the issue of a notification under sub-section (*1*) of section 4, the Returning Officer for the election shall give public notice of the intended election in such form and in such manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.

Nomination of candidates.

5A. Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

Presentation of nomination papers and requirements for a valid nomination.

5B. (1) On or before the date appointed under clause (a) of sub-section (1) of section 4, each candidate shall, either in person or by any of his proposers or seconders, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice issued under section 5, a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

(a) in the case of Presidential election, also by at least twenty electors as proposers and at least twenty electors as seconders, of whom at least twelve shall be elected members of Parliament and at least twenty-four shall be elected members of one or more State Legislative Assemblies;

(b) in the case of Vice-Presidential election, also by at least five electors as proposers and at least five electors as seconders:

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday.

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector.

(3) The Returning Officer shall not accept any nomination paper which is presented on any day before eleven o'clock in the forenoon and after three o'clock in the afternoon:

Provided that—

(a) if any nomination paper is presented on any day before eleven o'clock in the forenoon, the returning officer shall direct the person presenting it to present it after eleven o'clock in the forenoon and before three o'clock in the afternoon, either on the same day or on any other available day, and

(b) if any nomination paper is presented on any day other than the last date for making nominations after three o'clock in the afternoon, the Returning Officer shall direct the person presenting the nomination paper to present it at any time between eleven o'clock in the forenoon and three o'clock in the afternoon either on the next day or on any other available day.

(4) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of section 4, or to which the certificate copy referred to in sub-section (2) of this section is not attached, shall be rejected and a brief note relating to such rejection shall be recorded on the nomination paper itself.

(5) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at any election.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for the same election:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer.

Deposit.

5C. (*1*) A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees;

Provided that where a candidate has been nominated by more than one nomination paper for the same election, not more than one deposit shall be required of him under this sub-section.

(*2*) The sum required to be deposited under sub-section (*1*) shall not be deemed to have been deposited under that sub-section unless at the time of presentation of the nomination paper under sub-section (*1*) of section 5B, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

Notice of nominations and the time and place for their scrutiny.

5D. On the presentation of a nomination paper, the Returning Officer shall—

(*a*) sign thereon a certificate stating the date and time of presentation of the nomination paper and enter thereon its serial number;

(*b*) inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations; and

(c) cause to be affixed in some conspicuous place in his office a copy of the nomination paper as certified and numbered under clause (*a*).

Scrutiny of nominations.

5E. (*1*) On the date fixed for the scrutiny of nominations under sub-section (*1*) of section 4, the candidates, one proposer or one seconder of each candidate and one other person duly authorised in writing by each candidate, but no other person, shall be entitled to be present at the time of scrutiny of nominations and the Returning Officer shall give them all reasonablle facilities for examining the nomination papers of all candidates which have not been rejected under sub-section (*4*) of section 5B.

(*2*) For the removal of doubts, it is hereby declared that it shall not be necessary to scrutinise on the date fixed for the scrutiny of nominations the nomination papers already rejected under sub-section (*4*) of section 5B.

(*3*) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination paper and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(*a*) that, on the date fixed for the scrutiny of nominations, the candidate is not eligible for election as President or Vice-President as the case may be, under the Constitution; or

(*b*) that any of the proposers or seconders is not qualified to subscribe a nomination paper under sub-section (*1*) of section 5B; or

(*c*) that the nomination paper is not subscribed by the required number of proposers or seconders; or

(*d*) that the signature of the candidate or any of the proposers or seconders is not genuine or has been obtained by fraud; or

(*e*) that any of the proposers or seconders has subscribed, whether as proposer or seconder another nomination paper received earlier by the Returning Officer at the same election, or

(*f*) that there has been a failure to comply with any of the provisions of section 5B or section 5C.

(*4*) Nothing contained in clauses (*b*) to (*f*) of sub-section (*3*) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(*5*) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(*6*) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (*b*) of sub-section (*1*) of section 4 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(*7*) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(*8*) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.".

43 of 1950.

5. In section 6 of the principal Act,— Amendment of section 6.

(*a*) in sub-section (*1*), for the words "by his proposer or seconder", the words "by any one of his proposers or seconders" shall be substituted;

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The Returning Officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (*1*), cause the notice to be affixed in some conspicuous place in his office.".

Amendment of section 14.

6. In section 14 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) An election petition calling in question an election may be presented on one or more of the grounds specified in sections 18 and 19 to the Supreme Court by any candidate at such election:

Provided that—

(*i*) in the case of Presidential election, such petition may also be presented by at least forty electors of whom at least twelve shall be elected members of Parliament and at least twenty-four shall be elected members of one or more State Legislative Assemblies joined together as petitioners;

(*ii*) in the case of Vice-Presidential election, such petition may also be presented by at least ten electors joined together as petitioners.".

Substitution of new section for section 18.

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

Grounds for declaring the election of a returned candidate t be void.

"18. If the Supreme Court is of opinion—

(*a*) that the result of the election has been materially affected—

(*i*) by the improper reception or refusal of a vote; or

(*ii*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act; or

(*iii*) by reason of the fact that the nomination of any candidate (other than the successful candidate) who has not withdrawn his candidature has been wrongly accepted; or

(*b*) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted,

the Supreme Court shall declare the election of the returned candidate to be void.".

8. In Part IV of the principal Act, before the existing section 21, the following section shall be inserted, namely:— Insertion of new section 20A.

"20A. (1) The deposit made under section 5C shall either be returned to the person making it or his legal representative or be forfeited to the Central Government in accordance with the provisions of this section. Return or forfeiture of candidate's deposit.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list referred to in clause (b) of section 8, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3), the deposit shall be forfeited if at the election where the poll has been taken, the candidate is not elected, and the number of valid votes polled by such candidate does not exceed one-sixth of the number of votes necessary to secure the return of a candidate at such election.".

9. In section 21 of the principal Act,— Amendment of section 21.

(1) in sub-section (2),—

(a) in clause (b), for the words "members of both Houses of Parliament", the words and figures "members of the electoral college referred to in article 66" shall be substituted;

(b) after clause (c), the following clause shall be inserted, namely:—

"(cc) the form and manner in which public notice under section 5 shall be given by the Returning Officer;";

(c) for clause (g), the following clause shall be substituted, namely:—

"(g) the place and hours of polling, the manner in which votes are to be given both generally and in the case of illiterate voters or voters not conversant with the language in which ballot papers are printed or voters under physical or other disability and the procedure as to voting to be followed at elections;";

(2) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

STATEMENT OF OBJECTS AND REASONS

Experience has revealed that persons offer themselves as candidates to the highest office of President without even a remote chance of getting elected. Another matter which is of equal, if not greater, concern is the light-hearted manner in which persons resort to a court of law for challenging the election to the office of the Head of the State. It is found that the absence of some minimum safeguards in the provisions of the Presidential and Vice-Presidential Elections Act, 1952, encourages persons to do so. It is, therefore, considered necessary to amend the Act to make the following provisions, namely:—

(*1*) A prospective Presidential candidate should get the support of at least forty electors of whom at least twelve electors shall be members of Parliament and at least twenty-four shall be members of State Legislative Assemblies. A prospective Vice-Presidential candidate should get the support of at least ten electors.

(*2*) A prospective candidate should deposit a sum of two thousand five hundred rupees, which amount shall be liable to be forfeited in case the candidate fails to secure one-sixth of the number of votes necessary to secure the return of a candidate.

(*3*) There should be a minimum of forty electors joined together as petitioners for challenging an election to the office of President and of these forty electors at least twelve should be members of Parliament and at least twenty-four should be members of the State Legislative Assemblies. There should be a minimum of ten electors joined together as petitioners for challenging an election to the office of the Vice-President.

(*4*) The ground relating to the offence of bribery or undue influence for challenging an election to the office of President or Vice-President should be omitted altogether.

(*5*) The fact that the nomination of any candidate (other than the successful candidate) who has not withdrawn his candidature has been wrongly accepted should no longer constitute a ground for declaring the election of a candidate to be void unless such acceptance has materially affected the result of the election.

2. The opportunity is being taken to make certain other amendments which have been suggested by the Election Commission and which are explained in the notes on clauses.

3. The Bill seeks to give effect to the above objects.

NEW DELHI;
The 17th August, 1972.

H. R. GOKHALE.

Notes on clauses

Clause 2.—This clause seeks to amend section 2 of the Act. In the first place, in clause (*d*) it is proposed to substitute the words "a member of either House of Parliament" by the words "a member of the electoral college referred to in article 66" so as to bring it in conformity with the provisions of clause (1) of article 66. Secondly, it is proposed to add a definition of the expression "public holiday" on the lines of clause (*h*) of section 2 of the Representation of the People Act, 1951. Thirdly, in clause (*g*), it is proposed to substitute the word "authorised" by the word "competent" so as to bring it in conformity with the provisions of sub-section (2) of section 3 of the Act.

Clause 3.—This clause seeks to amend section 4 which deals with appointment of days for nominations, etc. This amendment is being made to facilitate the Election Commission appointing the days for nomination, scrutiny and withdrawal if the day appointed by means of a notification under the section happens to be a public holiday.

Clause 4.—This clause seeks to substitute new sections 5 and 5A to 5E for the existing section 5. Existing section 5 deals with nomination of candidates. That provision is at present being supplemented by the provisions contained in rules 4, 5 and 6 of the Presidential and Vice-Presidential Elections Rules, 1952. It is felt that such matters as are covered by the rules should not be left to the rules but should be incorporated in the Act itself. With this end in view, sections on the lines of sections 31 to 36 of the Representation of the People Act, 1951 are being substituted for the existing section 5. These new sections will deal with public notice of election, nomination of candidates, presentation of nomination papers and requirements for a valid nomination, deposit, notice of nominations and the time and place for their scrutiny and scrutiny of nominations.

Clause 5.—This clause seeks to make two amendments in section 6. The first amendment is a consequential one by reason of the new proposal that a candidate for Presidential election or Vice-Presidential election should have the support of a minimum number of electors as proposers and seconders. The other amendment seeks to substitute a new sub-section for the existing sub-section (3), on the lines of the corresponding provision in section 37 of the Representation of the People Act, 1951, to the effect that the returning officer should satisfy himself about the genuineness of the notice of withdrawal and the identity of the person delivering it.

Clause 9.—This clause seeks to amend section 21 of the Act relating to power to make rules. In sub-section (2) it is proposed to insert a new clause (*cc*) regarding the form and manner of public notice under section 5 and to substitute a new clause for existing clause (*g*) to cover cases of illiterate voters, voters under disability, etc. It also seeks to insert a new sub-section providing for the laying of rules before Parliament.

MEMORANDUM REGARDING DELEGATED LEGISLATION

By clause 9 of the Bill, in section 21 relating to power to make rules, in sub-section (2), a new clause (cc) is being inserted to provide for making of rules regarding the form and manner of public notice under section 5. Clause (g) is being substituted by a new clause whereby power is taken to make rules regarding the manner in which votes are to be given by illiterate voters or voters who are not conversant with the language in which the ballot papers are printed or by voters under physical or other disability. The delegation of power involved pertains to matters of procedure or detail and is of a normal character.

S. L. SHAKDHER,
Secretary.

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